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DOUG KAHN: THE PIED PIPER OF TAX LAW

Barrie Lawson Loeks and Burt P. Rosen***

Doug Kahn's love of tax law appears to be contagious. His wife was a tax lawyer, his son is now a tax law professor, and even his daughter in law is a tax lawyer.¹ Doug may have caught the "tax disease" from his elder brother, who was also a leading tax lawyer.² In politics, we have the Kennedys, the Bushes, and the Clintons; in the world of tax law, we have the Kahn family dynasty. One can only assume that the discussions around the family Thanksgiving table sliced and diced tax regulations and policies right along with the turkey and trimmings.

Doug attained his "pied piper" status by inspiring untold numbers of law students to follow him in the study and practice of tax law in the years since he joined the Michigan Law faculty in 1964.³ Many, if not most of these law students took Doug's tax courses because they felt they needed to, rather than out of any compelling desire to immerse themselves in tax law. After all, tax law is generally considered difficult to understand, and Doug's courses had the reputation of requiring a great deal of work. The great Albert Einstein may have formulated the theory of relativity, but even he had a hard time grasping tax law, reportedly saying, "[t]he hardest thing in the world to understand is income taxes."⁴

While Doug Kahn's tax classes may have been very demanding, as Doug enthusiastically bounced around in front of the class challenging his students to rigorously analyze tax provisions and work their way through seemingly contradictory regulations to ultimately reach a conclusion, many of his students were hooked. Like completing geometry proofs, working through Doug's tax problems gave the student the satisfaction of

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1. Doug's son, Jeffrey H. Kahn, is the Harry W. Walborsky Professor of Law at Florida State University College of Law; Doug's wife, Mary Kahn was a graduate of University of Michigan Law School and practiced tax law at the firms Arent Fox and Dykema Gossett.

2. Edwin Kahn, Doug's brother, was a name partner at the firm Arent, Fox, Kintner, Plotkin & Kahn in Washington, D.C., now known as Arent Fox.

3. Not that we suggest that law students should necessarily be compared to the rats being led to their deaths in *The Pied Piper of Hamelin*.

4. As famously reported by Einstein's long time friend and accountant, Leo Mattersdorf. *Tax Quotes*, IRS, www.irs.gov/uac/Tax-Quotes (last updated Jan. 11, 2016).

finding a defensible “answer” to legal questions, something sorely lacking in many legal disciplines. Even those students who didn’t ultimately specialize in tax learned a great deal about careful analysis in Doug’s classes that helped them in all their future endeavors.⁵

Because Doug’s classes are difficult, his students have always spent considerable time in Doug’s office seeking guidance. No one would ever call Doug Kahn a “cupcake.” He can be tough on students who do not apply themselves. However, Doug will also go out of his way to help those students who are engaged and need help, and he can’t really hide the fact that he is truly a nice person. Doug has acknowledged that “it is the teaching of students that is my primary love.”⁶ Because of his willingness to engage with students and the fact that he made them both think and laugh, countless students became good, life-long friends with Doug, whether they pursued tax law in their careers or not.

To the uninitiated, the study of tax law may appear to be a dreadfully dry subject. However, given the amount of time Americans spend talking (and complaining) about taxes, it is unquestionably one of the most relevant aspects of our legal system to most peoples’ lives. Decoding the tax laws is undeniably a service to the public. As Doug noted in one article, “[t]ax experts, like zookeeping experts, are important members of American society.”⁷

As a teacher, Doug is able to connect the sometimes obscure provisions of the tax code to real life problems. He also has the unique ability to tackle tax analysis with both a rigorous intellect and a well developed sense of humor. In one article, Doug referred to the “Platonic Internal Revenue Code,”⁸ and a survey of Doug’s many published articles turns up titles that include references to “Gifts, Gafts and Gefis,”⁹ “Tax Policy and Panda Bears,”¹⁰ and “Is The Report of Lazarus’s Death Premature?,”¹¹ in addition to a host of more prosaically titled articles and foundational

5. Barrie Loeks, the co-author of this article, falls into this category.

6. Paul Caron, “*Tax Prof Profile, Father’s Day Edition: Douglas A. Kahn*” TAXPROF BLOG (June 18, 2005), www.taxprof.typepad.com/taxprof_blog/2005/06/on_this_fathers.html.

7. Douglas A. Kahn & Jeffrey S. Lehman, *Tax Policy and Panda Bears*, 35 LAW QUADRANGLE NOTES, no. . 3, 1992, at 23, 28.

8. *Id.* at 24.

9. Douglas A. Kahn & Jeffrey H. Kahn, “*Gifts, Gafts, and Gefis*” – *The Income Tax Definition and Treatment of Private and Charitable ‘Gifts’ and a Principled Policy Justification for the Exclusion of Gifts from Income*, 78 NOTRE DAME L. REV. 441 (2003) [hereinafter *Gifts, Gafts, and Gefis*].

10. Kahn & Lehman, *supra* note 7.

11. Douglas A. Kahn, *Is the Report of Lazarus’s Death Premature? A Reply to Cameron and Postlewaite*, 7 FLA. TAX REV. 411 (2006).

books such as “Principles of Corporate Taxation”¹² or “Federal Income Tax – A Guide to the Internal Revenue Code.”¹³

Doug’s articles address many of the leading tax issues of the time. For example, in a 1985 article Doug argued for an expansive application of the partnership model of taxation based on the administration of partnership taxation rather than the state law characteristics of the entity.¹⁴ This was perhaps a precursor to the “check the box” regulations promulgated in 1997. In 1988, Doug argued for the reinstatement of the General Utilities doctrine, based on the premise that some form of integration of corporate and individual taxation was better than none.¹⁵ In the early 1990’s Doug challenged the commonly accepted wisdom of the tax expenditure approach to evaluating provisions of the tax law, arguing that there were multiple “normal” models of taxation making the tax expenditure model (based on a single normal model of taxation) misleading.¹⁶ Most recently, in 2014 Doug revisited his critique of the tax expenditure model, using accelerated depreciation as an example to show the flaws in the model.¹⁷ In all cases, Doug made his argument with clarity and precision.

Doug’s writings have often touched on issues of interest to those outside of tax law as well as tax scholars. He delves deeply into the concept of gifts and their role in our tax laws, addressing everything from tips to craps dealers, coins given to beggars, and transfers of partnership interests worth millions of dollars.¹⁸ Doug is unafraid of controversy, examining the tax implications of mandatory medical insurance,¹⁹ the tax impact of the University of Michigan’s dealings with former football coach Rich Rodriguez,²⁰ and a re-thinking of the college to law school paradigm;²¹ all

12. DOUGLAS A. KAHN, JEFFREY H. KAHN & TERRENCE G. PERRIS, *PRINCIPLES OF CORPORATE TAXATION* (2010).

13. DOUGLAS A. KAHN & JEFFREY H. KAHN, *FEDERAL INCOME TAX: A GUIDE TO THE INTERNAL REVENUE CODE* (7th ed. 2016).

14. Douglas A. Kahn, *Disparate Tax Treatment of Different Types of Business Organizations: Where Should We Go from Here?*, 30 *LAW QUADRANGLE NOTES*, no. 1, 1985, at 22. .

15. Douglas A. Kahn, “*Should General Utilities Be Reinstated to Provide Partial Integration of Corporate and Personal Income—Is Half a Loaf Better Than None?*” 13 *J. CORP. L.* 953 (1988).

16. Douglas A. Kahn and Jeffrey S. Lehman, “*Tax Expenditure Budgets: A Critical View.*” 54 *TAX NOTES* 1661 (1992).

17. Douglas A. Kahn, “*A Proposed Replacement of the Tax Expenditure Concept and a Different Perspective on Accelerated Depreciation.*” 41 *FLA. ST. U.L. REV.*, no. 1., 2013, at 143.

18. *Gifts, Gifts, and Gifts*, *supra* note 9.

19. Douglas A. Kahn & Jeffrey H. Kahn, *Free Rider: A Justification for Mandatory Medical Insurance Under Health Care Reform?*, 109 *MICH. L. REV. FIRST IMPRESSIONS* 78 (2011).

20. Douglas A. Kahn & Jeffrey H. Kahn, *Will The Tax Man Cometh to Coach Rodriguez?*, 120 *TAX NOTES* 474 (2008).

21. Douglas A. Kahn, *Time for Radical Change in Legal Education: Students Would Save Three Years of Tuition if They Could Enter Law School After Their Freshman Year*, *NATIONAL L. J.* 42 (2013).

“hot” topics to many at the time. In his writings, Doug goes past just untangling the tax code and regulations and examines the concepts underlying the provisions and their impact on taxpayer conduct, both intended and unintended. Doug also has a gift for explaining the inconsistencies and fallacies in and among many of our well established tax concepts, and puts forth thoughtful analyses of how to balance the many competing interests underlying both tax and social policies.

Of course, Doug’s interests range far beyond tax. The former University of Michigan representative to the NCAA, Doug is a self-described “rabid” University of Michigan sports fan.²² He also loves chess, bridge, gourmet food, and travel, and wielded a mean slice with a tennis racket in his younger days. Whatever he undertook, Doug never did it for affect; he was always passionately there, in the moment, whether beating you at tennis or parsing the tax code.

Doug Kahn is also a man of strong and often controversial opinions. There is seldom a question of where Doug stands on an issue. However, no matter how passionate Doug may be in his beliefs, he is actually a joy to argue with. He listens carefully, absorbs, parries, thrusts, and responds to the arguments of others, and is even capable of changing his mind on occasion, or at least conceding the occasional point. His completely genuine nature has endeared him to countless students of all political persuasions over the years.

For many University of Michigan Law graduates, memories of law school will always include Doug Kahn. The disciplined methods of analysis he taught have undoubtedly permanently changed the wiring in many student brains for the better. The ability to look clearly at a problem, break it down into its constituent parts and doggedly find a solution, is a gift Doug Kahn gave to his students. As a tax professor and as a person, Doug Kahn is truly one of a kind. While he may retire from active teaching, the lessons he has imparted over the last forty years will continue to impact the world, often in unexpected ways, and are a proud legacy of a great professor. To paraphrase Gilbert & Sullivan,

Tax law is the true embodiment
of everything that’s excellent
it has no kind of fault or flaw
and Doug Kahn, my friends, embodies that law.²³

Of course, our tax law in fact has many flaws, but Doug Kahn as a teacher and friend has very few, and there is no question that those of us who have been privileged to be his students and his friends owe him an enormous debt of gratitude. Thank you Doug!

22. Caron, *supra* note 6.

23. W.S. GILBERT & ARTHUR SULLIVAN, *IOLANTHE; OR, THE PEER AND THE PERI* act 1, song 7 (adapting the song *The Law is the True Embodiment*).